

**CHAPTER 18**  
**INTERNATIONAL TRADE COMMISSION INJURY DETERMINATIONS**

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19 CFR 351.208 (h) - continuations of suspended investigations

19 CFR 351.210 (j) - availability of DOC information from final determinations

## SAA

pp. 807-812, 817-818 various references to Article VI of the GATT 1994

pp. 846-873 determination of injury; definition of domestic industry; initiation and subsequent investigation; and evidentiary and procedural requirements

Sections C.9.c.(1) and (4) - standards for determining likelihood of continuation or recurrence of injury and provision of dumping margins

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Article 4 - definition of domestic industry

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**I. INTRODUCTION**

All antidumping (AD) investigations are governed by the Tariff Act of 1930, as amended (the Act). The Act provides that AD proceedings take place, concurrently, at two federal agencies: the Department of Commerce (the Department) and the U.S. International Trade Commission (the ITC). While the Department is responsible for determining whether "a class or kind of merchandise is being, or is likely to be, sold in the United States at less than its fair value," the ITC must decide whether a U.S. industry producing a "domestic like product" is materially injured or threatened with injury, or whether the establishment of a U.S. industry is materially retarded "by reason of" the imports sold at less-than fair-value prices. Both agencies must reach final affirmative determinations before an AD duty order can be issued.

Part I of this chapter describes the status of the ITC as an "independent" agency. Part II provides a very brief overview of the framework of the ITC's statutory findings and determinations in an AD investigation. Finally, Part III discusses provisions in the Act, most of which are changes in the law made by the Uruguay Round Agreement Act (URAA), that require E&C staff assigned to an AD investigation to maintain a close working relationship with their counterparts at the ITC.

The offices within the ITC that contribute to injury determinations fall under the Operations Office of the Director. These offices include: the Office of Economics, the Office of Industries, the Office of Tariff Affairs and Trade Agreements, the Office of Unfair Import Investigations,

the Office of the General Counsel, the Office of Investigations, and the commissioners' offices. Department analysts will most often interact with analysts in the Office of Investigations.

## II. THE ITC

The ITC consists of a bi-partisan, six commissioner body that oversees a professional staff of investigators, industry analysts, financial analysts, accountants, economists, and attorneys. The Act prescribes that no more than three of the commissioners can be from the same political party. Although the chairman is selected by the President, he or she cannot be from the same party as his or her predecessor. Also, the vice chairman cannot be a member of the same political party as the chairman.

Commissioners are appointed for nine year terms. However, a commissioner's actual term of service may be shorter than nine years if a vacancy is filled before a new nine-year term begins. (It is possible for a commissioner to be appointed to complete the unexpired portion of a former commissioner's term and, subsequently, to be re-appointed to a full nine year term.) Thus, a commissioner appointed for a full term has a tenure that extends beyond that of the administration currently controlling the executive branch. Also, unlike the executive branch where political appointees serve at the pleasure of the president, commissioners can be removed only "for cause" relating to personal or professional misconduct. The chairman and the vice chairman serve two-year terms.

In addition, the ITC is authorized to represent itself in court. The ITC is not represented by the Department of Justice and, therefore, can take positions in litigation independent of those promoted by the executive branch. Finally, the ITC's budget is not reviewed by the Office of Management and Budget, but is submitted directly to Congress. As a consequence of these statutory provisions, the ITC is an independent, quasi-judicial federal agency.

In addition to injury determinations, the ITC also performs a number of other functions related to international trade. Under Section 337 of the Trade Act of 1930, ITC investigates unfair trade practices such as patent, trademark, or copyright infringement. Upon finding a violation of Section 337, the ITC may issue an exclusion order, subject to Presidential disapproval. See, e.g., Removable Electronic Cards and Electronic Card Reader Devices, ITC Inv. No. 337-TA-396 (1997). The ITC also administers Section 201 of the Trade Act of 1974 which, subject to the discretion of the President, provides for a so called "escape clause" or "global safeguard" mechanism for import relief. Remedies available under Section 201 include the imposition of quotas or increased tariffs on fairly traded imports from all countries in order to facilitate positive adjustment to import competition. See, e.g., Presidential Proclamation 5050 of April 15, 1983-- Temporary Duty Increase and Tariff-Rate Quota on the Importation Into the United States of Certain Heavyweight Motorcycles, or Presidential Proclamation 7529 of March 5, 2002 -- To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products. Additionally, the ITC carries out "safeguard" actions designed to combat rapid increases in imports brought about by foreign governments. Such safeguard provisions include: safeguards concerning import interference with agricultural programs under section 22; China safeguards

under sections 421 and 422; NAFTA safeguards under section 302; and safeguards concerning imports from communist countries under section 406.

In addition to conducting trade remedy investigations, the ITC is responsible for continually reviewing and recommending modifications to the Harmonized Tariff Schedule of the United States (HTS). Under section 332 of the Tariff Act of 1930, the ITC conducts general investigations on any matter involving tariffs and international trade, including conditions of competition between U.S. and foreign industries.

The ITC's National Library of International Trade maintains an extensive collection of international trade resources. The library is located in room 300 of the ITC Building and is open during the agency's regular business hours. Additional information about the ITC may be found at <http://www.usitc.gov>.

### **III. STATUTORY FRAMEWORK**

The ITC must make a preliminary determination as to whether there is a "reasonable indication" of injury either 1) within 45 days of the date of the filing of an AD duty petition or notice of self initiation of an investigation by the Department; or, 2) within 25 days after receiving notification of initiation by the Department should the Department extend the initiation period in order to poll the U.S. industry (see Chapter 2). If the ITC's determination is affirmative, the case continues; if negative, the case is terminated.

The ITC must make a final determination of injury within 120 days of the Department's affirmative preliminary determination or 45 days of the Department's affirmative final determination, whichever is longer.

If the Department's preliminary determination is negative but its final determination is affirmative, the ITC has 75 days from the Department's final affirmative determination to make its final injury determination.

#### **A. Standard for Injury**

At both the preliminary and final stages of an AD investigation, the ITC is required to determine whether a U.S. industry is materially injured or threatened with injury, or whether the establishment of a U.S. industry is materially retarded "by reason of" the alleged less-than-fair-value imports.

The ITC's threshold for determining injury in a preliminary determination is lower than the threshold used by the ITC in its final determination. For the purpose of an affirmative preliminary determination, the ITC need only find a reasonable indication that a domestic industry is injured by imports allegedly sold at less than fair value. A stricter standard, however, applies in final determinations. To reach an affirmative determination in its final determination, the ITC must determine that a U.S. industry is either materially injured,

threatened with injury, or that establishment of an industry is “materially retarded.” See section 735(b) of the Act. Except for the different statutory standards involved in determining injury, the other statutory requirements in preliminary and final injury investigations are identical. The ITC must

- define the relevant domestic like product and domestic industry;
- determine whether that industry is experiencing or threatened with injury, or whether the establishment of the industry has been materially retarded; and
- determine whether there is a causal link between the injury and the imports allegedly sold at less-than-fair value.

#### 1. The Reasonable Indication Standard

Congress did not intend to set a high standard for a preliminary determination as to whether there is a "reasonable indication" of injury. The legislative history of the provision states that a reasonable indication of injury exists in "each case in which the facts could reasonably indicate that an industry in the United States could possibly be suffering injury..."

Courts reviewing ITC determinations of injury have held that the preliminary determination standard of "reasonable indication" is more than just facts which raise a "mere possibility" of injury. See American Lamb Company v. United States, 785 F.2d 994 (Fed. Cir. 1986). However, where information available to the ITC is inconclusive as to whether a negative determination is warranted, the ITC can continue its investigation so that it may gather information necessary for making a final injury determination.

#### 2. Material Injury

The term "material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant." Although this definition can reasonably be interpreted in a number of different ways, it indicates that a domestic industry need not be catastrophically injured to qualify for AD relief. According to section 771(7)(F) of the Act, in evaluating "injury," the ITC is directed to evaluate:

- a. Whether the volume of subject imports and any increase in that volume is significant, either in absolute terms or relative to domestic production or consumption. The ITC evaluates absolute subject import volume and market share of subject imports. Market share is the percentage of apparent U.S. consumption represented by imports.
- b. Whether there has been significant price underselling by subject imports compared to the prices of the domestic like product(s) and whether the effect of subject import prices depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
- c. The impact of imports on the domestic industry evaluated in terms of all relevant economic

factors which have a bearing on the U.S. industry, including but not limited to actual and potential declines in output, sales, market share, profits, productivity, return on investments and capacity utilization. The Act also directs the ITC to consider the negative effect of imports on cash flow, inventories, employment, wages, growth, investment and the ability to raise capital. Further, pursuant to the Act the ITC shall consider the actual and potential negative effects on existing development, as well as development of derivative or more advanced versions of the domestic like product. Finally the ITC is to consider the magnitude of the margin of dumping.

## **B. The Relevant Domestic Industry**

The ITC defines "the domestic like product" as a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to ... investigation...." See section 771(4)(A) of the Act. The legislative history provides that the "like" product standard should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that domestically produced and imported articles are not "like" each other. See section 771(10) of the Act.

After it defines the "domestic like product," the ITC defines the "domestic industry," which consists of the domestic producers, as a whole, of a domestic like product or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product. The ITC must then determine whether an "industry in the United States" is materially injured by reason of the imports of the merchandise subject to investigation.

The ITC usually examines the health of the domestic industry "as a whole" but, where the statutory criteria are present, the Commission can divide the United States into regional industries. Those criteria are as follows: 1) the domestic producers within the regional market sell "all or almost all" of their production of the product within the region; and 2) the demand within the region must not be supplied, "to any substantial degree," by domestic producers located elsewhere in the United States. See section III(B) below.

To establish material injury for a regional industry, the Act requires the ITC to find that there is a concentration of dumped imports into the isolated regional market and that all, or almost all, of the producers within that market are being injured by reason of the dumped imports. (See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).)

## **C. Threat of Material Injury**

Specific guidelines, including a listing of the economic factors, for determining whether a domestic industry is threatened with injury are found in section 771(7)(F) of the Act.

In general the ITC considers, among other relevant economic factors, the following:

- a. If a countervailable subsidy is involved, information about the nature of the subsidy and whether imports of the subject merchandise are likely to increase;
- b. Any existing unused production capacity (or imminent, substantial increase in production capacity) in the exporting country which indicates the likelihood of substantially increased imports of the subject merchandise;
- c. A significant increase of the volume (or market penetration) of imports of the subject merchandise which indicates the likelihood of substantially increased imports;
- d. Whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices (and are likely to increase demand for further imports);
- e. Inventories of the subject merchandise;
- f. The potential for product-shifting if production facilities in the foreign country which can be used to produce the subject merchandise are currently being used to produce other products;
- g. When there are imports of both a raw agricultural product and any product processed from that raw agricultural product, the likelihood that there will be increased imports (by reason of product shifting);
- h. The actual and potential negative effects on the existing development and production efforts of the domestic industry (including efforts to develop a derivative or more advanced version of the domestic like product);
- i. Any other demonstrable adverse trends indicating the probability that there is likely to be injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

The ITC considers these factors as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted. While the presence or absence of any particular one of these factors does not necessarily give decisive guidance with respect to the determination, such a determination may not be made on the basis of mere conjecture or supposition.

There are specific provisions covering the effect of dumping in third-country markets and covering definitions of WTO Member market and European Communities, as well. See section 771(7)(F)(iii)(II) and (III) of the Act.

#### **D. Material Retardation**

The ITC can also make an affirmative determination if it finds that dumped imports have materially retarded the establishment of an industry in the United States. To date, this provision has rarely been asserted by a petitioner in an antidumping duty investigation. Nearly all AD investigations have been initiated on the basis of petitions by established manufacturers of the domestic like product. Where material retardation has been raised as an issue, the ITC has required petitioners to offer evidence that 1) they have made substantial commitments to the domestic production of the domestic like product and 2) has required petitioners to indicate how the dumped imports are responsible for the difficulties that petitioners have experienced in attempting to establish domestic production.

#### **E. Cumulation and Negligibility**

If there are multiple countries in the antidumping investigation whose imports are the subject of simultaneous AD investigations, the ITC may consider the cumulative effect of the subject imports from these countries if such imports compete with each other and with the domestic like products in the United States market. If imports from a particular country under investigation are deemed to be negligible, the ITC does not include those imports in its cumulation analysis.

The statute requires that an investigation be terminated with a negative injury determination if imports of the subject merchandise are found to be negligible. Negligible imports are defined generally in the Act as imports from a country of merchandise corresponding to the domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of subject merchandise, and if the imports from these countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are not deemed to be negligible.

#### **F. Causation**

In addition to ascertaining whether the domestic industry is materially injured, the ITC must determine whether this injury was "by reason of" the imports sold at less than fair value. The courts have held that this causation standard is satisfied if the dumped imports contribute, more than minimally or tangentially, to the injured condition of the domestic industry.

The statutory focus of an ITC AD investigation consists of the following: 1) the volume of the subject imports; 2) the effect of these imports on the prices of domestically produced products in the U.S. market; and, 3) the impact of this competition on the domestic producers of the like product. The ITC compares the average prices of domestically produced products, imports

subject to the investigation, and, in some cases, imports not subject to the investigation (which, presumably, are fairly traded). In addition, the ITC may evaluate sales and revenues lost by the domestic producers to sales of the imports subject to investigation. The Office of Economics at the ITC developed a computer model, "Commercial Policy Analysis System (COMPAS)," that utilized spreadsheets which estimated the effect of dumped imports on the domestic industry. Certain assumptions concerning the relationship between dumping margins and pricing underlie these spreadsheets. In conduct of its analysis, however, the ITC no longer regularly relies upon COMPAS.

#### **IV. RELATIONSHIPS OF THE DEPARTMENT'S AND ITC'S INVESTIGATIONS**

Prior to the effective date of the URAA, the Department and the ITC conducted what were, for the most part, completely independent investigations. Consultations between the two agencies were primarily conducted on an *ad hoc* basis. Staff of both agencies might meet to discuss product definition issues prior to initiation, or to understand each other's determinations and orders. This is because a change in the Department's scope language for an investigation could affect the proper description of the domestic like product and, consequently, the boundaries of the domestic industry determined by the ITC. Also, a partially negative determination by the ITC in its preliminary determination could affect the Department's scope language. A partially negative final determination by the ITC might require the Department to recalculate the margins of dumping as well as change the scope of any eventual AD duty order.

In addition, even prior to the URAA, the extension of investigation deadlines by the Department had the possibility of complicating case scheduling at the ITC. This continues to be the case post-URAA, particularly where the Department extends determination dates for some, but not all, in a group of investigations in which the ITC had cumulated the imports for its preliminary determination. Under such circumstances, the ITC would be compelled to make its final injury determination on certain investigations before it would have an opportunity to evaluate causation for the other, extended investigations. Because our postponement of a determination date for one or more cases when there are other cases simultaneously involving the same product could materially affect the ITC's conduct of its investigation, the Department should consult with the ITC before extending any deadline for issuing preliminary or final determinations.

The URAA amendments to the Act now direct the Department to evaluate certain types of data that historically were gathered by the ITC rather than the Department. To avoid redundant collection of information by both agencies, there are now issues where the Department's staff, working closely with the ITC's staff, can use certain data gathered by the ITC as well as methods of analysis relied upon by the ITC staff. These statutory provisions include determining domestic industry support for a petition, drafting an AD duty order in a case in which the ITC had found injury to a regional industry, and imputing knowledge that dumped imports would be likely to cause injury in critical circumstance determinations.

##### **A. Determining Industry Support for a Petition**

Although the Department is responsible for determining whether a petition has the requisite

industry support, the ITC has expertise in surveying domestic producers. In fact, the ITC normally sends questionnaires to all the domestic producers of which it is aware within five days of a petition being filed. Unfortunately, the ITC rarely has received an adequate response to its questionnaire survey by the Department's normal initiation deadline, *i.e.*, the twentieth day after the filing of the petition.

However, if domestic producer data are available prior to the initiation deadline, the ITC will share the non-confidential results of those parts of its questionnaire survey dealing with production, imports, support of the petition, the ownership of the responding U.S. producer, and possible relationships of the responding U.S. producer to related companies importing into the United States or producing the subject merchandise. For example, the instructions accompanying the ITC's producers' questionnaire in its preliminary investigation of [Carbazole Violet Pigment 23 from China and India](#), ITC Invs. Nos. 701-TA-437 and 731-TA-1060 and 1061 (December 2004 (Final)) contained the following statement concerning the release of questionnaire responses: " ... if your firm is a U.S. producer, the information you provide on your production and imports of carbazole violet pigment 23 and your responses to the questions in Part I of the producer questionnaire will be provided to the U.S. Department of Commerce, upon its request, for use in connection with (and only in connection with) its requirement pursuant to section 732(c)(4) of the Act (19 U.S.C. sec. 1673a(c)(4)) to make a determination concerning the extent of industry support for the petition requesting this investigation. Any information provided to Commerce will be transmitted under the confidentiality and release guidelines set forth above. Your response to these questions constitutes your consent that such information be provided to Commerce under the conditions described above."

See Chapter 1 for more information on ITC domestic producer information. As with any other communication between the Department and the ITC, analysts should consult with their supervisor or PM before asking the ITC for this type of data.

## **B. Drafting Orders in Regional Industry Cases**

Courts reviewing Department determinations have held that the Constitution requires AD duties to be uniformly assessed at all ports. Article 4.2 of the Agreement on Implementation of Article VI of GATT 1994 has required that AD duties be assessed only against the products consumed in the region when the domestic industry is determined to be a regional industry. Prior to the URAA, the United States had not implemented this provision. Currently, the URAA provides explicitly that the Department must limit the assessment of duties to those exporters and/or producers that exported the subject merchandise for sale in the region during the period of investigation.

The findings necessary to determine if the domestic industry is regional are made by the ITC on the basis of a detailed evaluation of statistics of approximately three years' worth of domestic shipments of U.S. imports and the domestically produced like product. This analysis of U.S. shipments information is complex. Also, the ITC may change its definition of the boundaries of the region between its preliminary determination and its final determination. Unlike the Department, the ITC does not focus on the knowledge of foreign producers or foreign exporters

with respect to the destination of their exports.

There are very few regional industry investigations and most of the cases to date have concerned imports of cement. (See, e.g., Gray Portland Cement and Cement Clinker From Japan, Mexico, and Venezuela, Invs. Nos. 303-TA-21 (Review) and 731-TA-451, 461, and 519 (Review) USITC Pub. 3361 (October 2000) at 12.) Nevertheless, in conducting our own analysis concerning domestic shipments, it is counter-productive for the Department to duplicate the information requests of the ITC. Therefore, when a regional industry case is filed, we coordinate with the ITC staff to develop a methodology for tracing U.S. shipments of imports back to the appropriate importers, foreign exporters, and foreign producers. Any such effort will require an agreement with the ITC concerning the sharing of confidential information, as in the case of determining industry support for petitions. Consult with your supervisor or PM before contacting the ITC on matters involving regional industries.

### **C. The Determination of Critical Circumstances**

The 1979 amendments to the Act authorized the retroactive suspension of liquidation where "critical circumstances" existed. This provision was based on the premise that the initiation of an AD investigation would motivate exporters to ship as much merchandise as possible prior to suspension of liquidation since suspension of liquidation accompanies a preliminary determination of dumping. Moreover, the 1979 amendments to the Act established that to determine critical circumstances the administering authority must determine: 1) that the importer had knowledge that the foreign exporter was dumping; and, 2) that the dumping would cause injury. The 1979 Act, however, contained no reference to such dumping causing injury.

Knowledge that the dumping would cause injury was included in the URAA. The task of imputing knowledge to the importer that the dumping was likely to cause injury was delegated to the Department rather than to the ITC. However, the Act still directs the ITC to make its own critical circumstances determination. In this regard, in the great majority of cases, the ITC has made a finding of no critical circumstances. There is at least one case in which we made an affirmative critical circumstances determination and the ITC subsequently agreed: See [Honey From the People's Republic of China: Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order](#), 66 FR 63670 (December 10, 2001).

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The statute is silent as to how we are to make a finding that there was knowledge that there was likely to be material injury; the SAA provides no additional guidance. The method of

implementing this provision has been left to the Department's discretion.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling merchandise at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. See, e.g., [Preliminary Critical Circumstances Determination: Honey from the People's Republic of China](#), 60 FR 29824 (June 6, 1995).

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be injury by reason of dumped imports during the critical circumstances period – the 90-day period beginning with the initiation of the investigation. See 19 CFR 351.206(a). If the ITC preliminarily finds threat of injury, the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that injury was likely.

Based on the ITC's preliminary determination of threat of injury, an increase in imports, and preliminary margins of a particular magnitude, the Department may determine that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be injury by means of sales of the subject merchandise at less than fair value.

## **V. POST-ANTIDUMPING DUTY ORDER INJURY DETERMINATIONS AND CONSIDERATIONS BY THE ITC**

### **A. Reviews Based on Changed Circumstances**

Sections 751(b)(1) and (2) of the Act direct the ITC to review its injury determinations based on changed circumstances if the ITC receives information, or a request from an interested party which shows changed circumstances sufficient to warrant a review of an antidumping duty order, countervailing duty order, suspension agreements, or continued investigations. In conducting the changed circumstances review of an antidumping duty order, the ITC shall determine whether revocation of the order is likely to lead to continuation or recurrence of injury. Notice of the review and order or suspension agreement must be published in the Federal Register. Also, a review cannot be undertaken until 24 months after the publication of the notice of that determination or suspension. (See section 752 of the Act for the special rules governing ITC injury determinations for changed circumstances. Also see Chapter 18 for information on Department activities with regard to changed circumstances reviews.)

**B. Sunset Reviews**

Section 751(c) of the Act directs the ITC to conduct a review five years after the date of publication of an antidumping duty order to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury. Under the Act, the ITC also conducts five-year reviews of countervailing duty orders and suspension agreements.

**C. Considerations of Injury by the ITC for Prevention of Circumvention of AD Orders**

As directed by section 781(e) of the Act, the Department must provide formal notification to the ITC concerning a Department finding that circumvention of an order has occurred. These situations involve questions of whether merchandise which is completed or assembled in the United States or in other foreign countries, or merchandise that is later developed, may be circumventing the order and determined to be within the scope of the order. The ITC may request a consultation with the Department over the proposed inclusion of the above-cited merchandise within the scope of an AD duty order. If the consultation results in the ITCs belief that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department as to whether the inclusion would be inconsistent with the affirmative injury determination on which the AD duty order is based. To date, the ITC has never concluded that a proposed affirmative anti-circumvention determination by the Department presents a significant injury issue. See Chapter 26 for information on Department actions with regard to prevention of circumvention of AD orders.